



PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

before application of

Eberhard FRITZ and Gerd PHILLIPPS

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Appln. No.: 10/018,619

22 FEB 2006

Filed: December 17, 2001

For: RADIATION SOURCE FOR ENDOVASCULAR RADIATION TREATMENT Legal Staff  
Internal

Attorney Docket No.: 3993.003

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Customer ID: 000041288

DEC 28 2005

REQUEST FOR RECONSIDERATION, RESPONSE TO  
NOTIFICATION OF MISSING REQUIREMENTS, AND  
AMENDED PETITION UNDER 37 C.F.R. §1.137(b)  
TO REVIVE ABANDONED APPLICATION

OFFICE OF PETITIONS

Mail Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The undersigned, on behalf of Applicants, requests reconsideration of the Decision mailed July 19, 2005 in regard to the PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE ABANDONED APPLICATION.

The Decision indicates that the Petition under 37 C.F.R. §1.137(b) is dismissed because Applicant has failed to provide a statement that the entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition, was unintentional.

Applicants apologize for this oversight. The entire delay in filing the required reply, from the due date for the reply until the filing of a grantable petition, was, in fact, unintentional, caused by the undersigned's move to a new office, by the filing of thousands of change of address forms,

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and the accidental and unnoticed failure to file a timely change of address form in the present application.

First, the Notification of Missing Requirements mailed February 21, 2002, was apparently received, but when the Response was filed, the wrong serial number (10/018,623 rather than 10/018,619) was typed onto the header of the Response. The correct Attorney Docket number was typed onto the response, thus it appeared from Applicants' file that a proper response had been filed to the Notification of Missing Requirements, if one overlooks the incorrect serial number.

The Notification of Abandonment mailed by the USPTO on January 17, 2003, was mailed to Applicants PO Box address.

The undersigned moved to a new location on February 2002. The undersigned engaged his entire staff in preparing and filing change of address forms, one for each of the thousands of pending patent applications. This was a massive project and took several months, during which time the old physical address and PO Box addresses were maintained and mail was promptly collected at the former addresses and brought to the new address.

That is, the physical office address was converted to the residence of the undersigned and thus all mail addressed to the physical office address in fact continued to be delivered to the undersigned, even though the 3940 Venetian Way address was no longer used as office.

The PO Box address was maintained for 18 months after the move, after which no mail was found to be received at this PO Box, whereupon Applicants discontinued use of the PO Box and

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filed "change of address" forms with the US Postal Service for the PO Box address every six months (in post card form or via internet), it being believed that any possible remaining mail would be forwarded to the undersigned's new address listed on the Change of Address form.

Unfortunately the United State Postal Service returned the Notice of Abandonment to the USPTO on April 29, 2003. The USPTO did not re-mail the Office Action to the new address.

Applicant's legal representative has checked the docketing system and confirmed that the Notice of Abandonment was not received in the undersigned's office. In view of the above, the application languished in Applicant's file cabinets, it being believed by Applicants that a timely response had been filed, while in reality no response was timely filed and the application became abandoned. Applicants were unaware of the abandonment. Thus, abandonment occurred unintentionally.

Applicants also this year hired additional clerical staff and had every single patent application reviewed for compliance with change of address requirements. This project took several weeks to complete.

Next, regarding the requirement to file a complete reply, it is noted that, according to the instructions printed on the Notice to File Missing Parts, a copy of the Notice to File Missing Parts should accompany the submission responsive to the Notice to File Missing Parts. However, Applicants no longer have a copy of the Notice to File Missing Parts. In order to expedite examination of this application, Applicants file herewith a copy of the executed Declaration and a copy of the

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Notice of Abandonment referring to the failure to respond to the Notice to File Missing Parts.

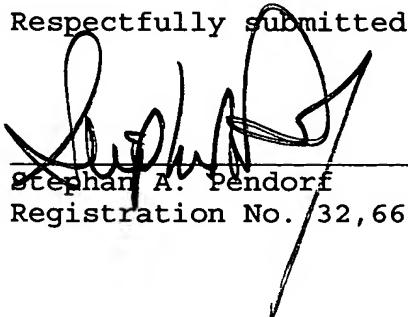
A credit card form authorizing the charging of the Petition fee of \$1,500.00 was previously attached.

A Petition for Extension and credit card form authorizing the charging of the Three Month Extension fee of \$1,020.00 is attached hereto.

Accordingly, revival of the application is respectfully requested.

Please charge any additional fees or credit any overpayment to Deposit Account No. 16-0877.

Respectfully submitted,

  
\_\_\_\_\_  
Stephan A. Pendorf  
Registration No. 32,665

Pendorf & Cutliff  
5111 Memorial Highway  
Tampa, FL 33634-7356  
(813) 886-6085

Date: December 19, 2005

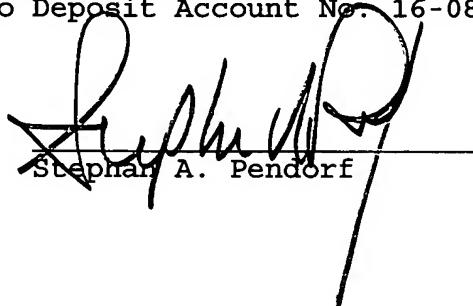
**CERTIFICATE OF MAILING AND AUTHORIZATION TO CHARGE**

I hereby certify that the foregoing REQUEST FOR RECONSIDERATION, RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS, AND AMENDED PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE ABANDONED APPLICATION, for U.S. Application No. 10/018,619 filed December 17, 2001, were deposited in first class U.S. mail, postage prepaid, Mail Stop: PETITIONS, P.O. Box 1450, Alexandria, VA 22313-1450, on December 19, 2005.

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The Commissioner is hereby authorized to charge any additional fees which may be required at any time during the prosecution of this application without specific authorization, or credit any overpayment, to Deposit Account No. 16-0877.



Stephan A. Pendorf



## UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

Evelyn A. Defillo  
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5111 Memorial Hwy.  
Tampa, Florida 33634-7356

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JUL 25 2005

Y: -----

In re Application of  
Fritz  
Serial No.: 10/018,619  
PCT No.: PCT/EP00/05631  
Int. Filing Date: 19 June 2000  
Priority Date: 18 June 1999  
Attorney's Docket No.: 3993.003  
For: RADIATION SOURCE FOR  
ENDOVASCULAR RADIATION TREATMENT

DECISION ON  
PETITION  
UNDER 37 CFR 1.137(b)

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## OFFICE OF PETITIONS

This decision is responsive to the "PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, TO ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE APPLICATION" filed 05 November 2004. Applicant has included a petition fee of \$1500.

BACKGROUND

On 19 June 2000, applicants filed international application PCT/EP00/05631, which claimed priority of an earlier European application filed 18 June 1999. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 December 2000. A Demand for international preliminary examination was filed on 06 December 2000. Accordingly, the thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 18 December 2001.

On 17 December 2001, applicants filed a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a preliminary amendment, and a check for \$1200 which included the basic national fee of \$890. These papers were assigned Application No. 10/018,619.

On 15 February 2002, the United States Patent and Trademark mailed the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) indicating that applicant was required to file an oath/declaration and a surcharge fee. The notification set a two-month time period in which to respond.

On 17 January 2003, the United States Patent and Trademark mailed the "NOTIFICATION OF ABANDONMENT" (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to respond to the notice mailed 15 February 2002.

On 09 June 2005, applicant filed the current petition.

### DISCUSSION

MPEP §711.03 states, in part:

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action.

The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions).

Applicant has not provided the proper documentation to prove an allegation of nonreceipt of the Office action. Further, applicant alleges that the 15 February 2002 notice (form PCT/DO/EO/905) was mailed to the wrong address, and therefore applicant did not receive said notice. However, a review of the application has found that on 16 May 2003, applicant submitted an Information Disclosure Statement which included the address to which the 15 February 2002 notice was mailed. Therefore, a full fifteen months after the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905)" was mailed to applicant, applicant was still using the same address. Furthermore, applicant did not file a change of address in this application until 19 May 2003, well after the mailing of the "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905)."

A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied (1) by a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional," (2) by a proper reply, (3) by the petition fee required by law (37 CFR 1.17(m)), and (4) if the international filing date of the application is before June 8, 1995, any petition to revive under 37 CFR 1.137(b) must be accompanied by a terminal disclaimer and small entity fee of \$55

With respect to element (1), applicant has failed to provide a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional." Therefore, the petition to revive is dismissed.

### CONCLUSION

The petition to withdraw the holding of abandonment is **DISMISSED**.

The petition to revive under 37 CFR 1.137(b) is **DISMISSED**.

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



Debra Brittingham  
PCT Special Programs Examiner  
Office of PCT Legal Administration

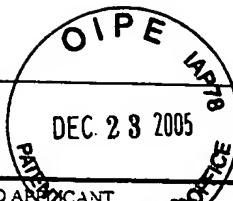


Leonard Smith  
PCT Legal Examiner  
Office of PCT Legal Administration

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UNITED STATES PATENT AND TRADEMARK OFFICE



Commissioner for Patents, Box 9211  
United States Patent and Trademark Office  
Washington, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

U.S. APPLICATION NUMBER NO.	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
10/018,619	Eberhard Fritz	3993.003

INTERNATIONAL APPLICATION NO.

PCT/EP00/05631

I.A. FILING DATE	PRIORITY DATE
06/19/2000	06/18/1999

Stephan A Pendorf  
Pendorf & Cutliff  
P O Box 20445  
Tampa, FL 33622-0445

*old address*

CONFIRMATION NO. 4988

371

ABANDONMENT/TERMINATION  
LETTER

OC00000009394560

Date Mailed: 01/17/2003

### NOTIFICATION OF ABANDONMENT

The United States Patent and Trademark Office in its capacity as an Elected Office (37 CFR 1.495), has made the following determination:

- Applicant has failed to respond to the notification of MISSING REQUIREMENTS, mailed 02/15/2002 within the time period set therein.

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Therefore, the above identified application failed to meet the requirements of 35 U.S.C. 371 and 37 CFR 1.495, and is ABANDONED AS TO THE UNITED STATES OF AMERICA.

BARBARA A CAMPBELL

Telephone: (703) 305-3631

### PART 1 - ATTORNEY/APPLICANT COPY

FORM PCT/DO/EO/909 (371 Abandonment Notice)